IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Civil Revision Petition No.83/1997.
(M/s Lakshmi Company & Another
Vs.
The Oriental Bank of Commerce)

DATE OF ORDER : August 28, 2006

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. R.R. Nagori for the petitioners.
Mrs. Vijay Laxmi Joshi for the non-petitioner.

BY THE COURT :

Against the petitioner firm a suit was filed by the non-petitioner Bank for recovery of Rs.2398.20 ps. According to the plaintiff Bank, the petitioner firm was having account with the Bank and initially there were three partners viz., Ramjas, Shyam Sundar and Indra Devi. The petitioner firm was regularly depositing builties, hundies and cheques while filling up form No.29 in its bank account No.288. Looking to the business, the plaintiff Bank allowed the firm over-draft facility and, as per the plaintiff Bank,

there was outstanding amount of Rs.2,398.20 ps. In the suit, the plaintiff Bank pleaded that pro note was was executed by the three partners of the firm and they put their signature agreeing to pay the Bank the said outstanding amount and admitted the liability of Rs.1,390.50 ps. When this amount was not paid, the Bank filed the suit before the Addl. Civil Judge (Jr. Dn.) No.1, Jodhpur for recovery of a total amount of Rs.2,398.20 ps which comprised of the actual amount Rs.1,390.50 ps, interest Rs.914.50 ps and other expenses Rs.93/-.

In the suit, the defendant petitioners filed their written statement. On the pleadings of the parties, the trial Court framed issues for adjudication. Vide judgment dated 04.12.95, the suit of the plaintiff Bank was decreed for recovery of Rs.2,390.20 ps from the defendants alongwith interest at a rate of 18.5% p.a. from the date of filing of the suit till payment. Against the said decree and judgment passed by the trial Court, the defendant petitioners filed appeal before the District Judge, Jodhpur. The appeal was head and decided by learned Addl. District Judge No.2, Jodhpur vide judgment dated 16.08.1996 affirming the judgment and decree passed by the trial Court. The learned Addl. District Judge No.2, Jodhpur held that there is no illegality or irregularity in the conclusion arrived at by the trial Court and the finding of the trial Court is based on correct appreciation of evidence on record. Aggrieved by the

said judgments passed by learned Addl. District Judge No.2, Jodhpur as well as trial Court, the defendants have preferred this revision petition under Section 115, C.P.C.

It is contended by learned counsel for the petitioners that before the trial Court to prove the case the plaintiff Bank adduced oral evidence and, in all, three witnesses P.W.-1 Anand Swaroop Soni, P.W.-2 M.D. Bohra and P.W.-3 Surendra Chandra Bhandari were examined. The defence examined its witnesses D.W.-1 Narayan Prakash and D.W.-2 Shyam Sundar. It is emphatically argued that the plaintiff Bank obtained signatures of the partners of the petitioner firm on a blank promissory note and no promissory note was executed by the partners of the petitioner firm as pleaded by the plaintiff-respondent. It is urged that the petitioners filed categorical reply that they did not execute pronote Ex.-A/1. Learned counsel for the petitioners contended that it was specifically admitted by the plaintiff's witness P.W.-3 Surendra Chandra Bhandari that the pro-note Ex.-A/1 was filled in at the instance of Shri R.K. Gupta, Manager of the Bank and it has come on record that on the date of pro-note Ex.-A/1 i.e., 01.01.1976, Shri R.K. Gupta was not the Manager of the Bank. Learned counsel for the petitioners contended that action was taken for this act of Shri Gupta against him and he was suspended. It is further contended that besides these facts it was also brought to the notice of the trial Court that

wrong A/c No.288 was put on the pro-note whereas the petitioner firm's A/c was numbered 892. Learned counsel for the petitioners vehemently contended that the trial Court fell into serious perversity in not taking into account the plea of the petitioners that Ex.-A/1 pro note was signed by the previous partners of the firm at the time of opening the bank account and, on 01.01.1976 – the date of the pro note, that earlier account with the bank was not in currency on behalf of the firm. Learned counsel for the petitioner vehemently argued that the case of the bank was set up grounded on document Ex.-A/1 pro note and it has come on record by way of the plaintiff's evidence that the said pro note was drawn and drafted at the instance of Shri R.K. Gupta but, strangely enough, the Bank did not produce Shri R.K. Gupta before the Court and, therefore, even if the Court had occasion to draw inference on the basis of the said pro note, as the same time, adverse inference ought to have been drawn against the Bank for not examining Shri R.K. Gupta, more so, when the petitioners categorically stated in their reply that the pro note was signed by the initial firm partners much before 01.01.1976. It is contended that the initial partners of the firm had signed the blank pro note in favour of the Bank because the firm was extended over-draft facility but, at the instance of Shri R.K. Gupta, P.W.-3 Suresh Chandra Bhandari drew up fabricated pro note dated 01.01.1976. It is further contended that

according to the notice sent by the counsel for the Bank, on 01.01.1976, Shri O.P. Wadhwa was the branch Manager of the Bank and, therefore, after recording of the statement of P.W.-3 Suresh Chandra Bhandari, the petitioners filed application on 09.10.1995 before the trial Court stating that in the interest of justice appointment letter or posting order of the branch Managers may be summoned in the Court and it may be confirmed that on 01.01.1976 who was the Manager of the Bank; but, the trial Court rejected the said application. One more application under Order 6 Rule 17 for amendment in the reply to the suit was also filed but the same was rejected. As per learned counsel for the petitioners though the trial Court was under obligation to take lenient view for providing opportunity for production of proper evidence, obviously the trial Court failed to arrive at proper adjudication of the issues in the matter because the factual material itself has not been considered in right perspective and the learned appellate Court also did not consider the important question whether the factual aspects of the case have been correctly appreciated by the trial Court or not.

As per learned counsel for the petitioners, the trial Court was duty-bound when specific contention was raised before the Court supported by evidence that the said pro note was not executed on 01.01.1976 and since the petitioners disputed the very existence of the document the trial Court wrongly observed that it

was not material as to who was the manager of the bank at the time of execution of the pro note.

Per contra, learned counsel for the plaintiff Bank, in the first instance, contended that this revision petition is not maintainable because the original suit was filed by the plaintiff Bank for recovery of the amount of Rs.2,390.20 ps and the same was decreed and the appeal filed against the judgment and decree dated 04.12.1995 was dismissed by the appellate Court and both the Courts below gave a concurrent finding on the issue in favour of the plaintiff Bank. He contended that there is no provision under the Code of Civil Procedure for further appeal against the judgment of the lower appellate authority upholding the judgment and decree for recovery of the decretal amount of Rs.2,390.20 ps and as such the petitioner has preferred the present revision petition. Learned counsel for the respondent Bank invited my attention towards Section 115 (2), C.P.C. The relevant portion of Section 115(2) reads as under :

> "(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto."

It is contended that in Section 96(4), C.P.C. it is provided that no appeal shall lie, except on a question of law, from a decree where the amount or value of the subject-matter of the original suit does

not exceed Rs.3,000/- and, now after amendment in the Code of Civil Procedure, it is Rs.10,000/- and thus the legislature has imposed a complete bar upon further challenge. However, due to pecuniary limitation a restriction is imposed and thus appeal would not lie, but that, by itself, does not provide for the remedy by way of revision petition and, therefore, the revision petition filed by the petitioner is barred by law. He contended that exercise of revisionary jurisdiction by this Court, though inherent, is limited to supervisory purposes and, therefore, there is conspicuous distinction between supervisory exercise of jurisdiction and appellate exercise of jurisdiction. It is argued that under Section 115 of the Code of Civil Procedure this Court may pass appropriate order as it may think fit if the Court subordinate to it appears (a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested, or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity; but, at the same time, restriction imposed under Section 115(2) C.P.C. which provides that the High Court shall not, under this Section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto, therefore, the revisionary jurisdiction under Section 115(2), C.P.C. cannot be exercised to quash the decree and order under challenge. According to

him, the prayer of the petitioner for quashing and setting aside the decree passed by the Court below cannot be granted in the present revision petition. He argued that Section 96(4) of the Code of Civil Procedure lays down restriction and not a bar upon appeal to the higher Court and, therefore, does not leave any scope for circumvention of the remedy. Learned counsel for the plaintiff Bank vehemently argued that when the decree cannot be challenged further in appeal owing to restriction arising out of pecuniary limit of the value or amount of the subject-matter, entertainment of the revision petition in this regard will defeat the very intention of legislature for imposing such limitations and, therefore, in the present case, the revision petition is also barred by law under Section 115 (2), C.P.C. In support of his contentions, learned counsel for the respondent Bank cited the judgment reported in 2003 (6) SCC 669, rendered in the case of Shiv Shakti Co-operative Housing Society Vs. Swaraj Developers.

It is further contended by learned counsel for the plaintiff-respondent that the judgment and decree passed by the trial Court is based on the findings arrived at upon material admission of the defendant-petitioners. He contended that the defendants admitted the pro note upon which the plaintiff's suit was based and once the existence of the suit document in a case of recovery of money has been admitted, it is immaterial whether all the current partners of the

firm have put signatures thereon or not. He contended that the applications filed by the petitioner defendants before the trial Court were rightly rejected and, therefore, the defendants did not agitate rejection of the applications either in revision or appeal and the order of the trial Court attained finality. He argued that at this stage the petitioners cannot be permitted to raise the points which have already attained finality. It is further contended that on the material issue the burden of proof was not discharged by the defendants and as such it cannot be said that the trial Court arrived at perverse findings upon the questions relating to facts of the case. He contended that it is conspicuous admission on record that the petitioner firm was having the facility of over-draft and, therefore, as per the defence evidence, the document Ex.-A/1 pro note was signed in favour of the Bank and, accordingly, on the nature of the pro note there is nothing on record to dispute its authenticity and the objections raised to it have not been substantiated by evidence by the defendant petitioners. In these circumstances, when the plaintiff Bank proved before the Court the debit balance of Rs.1,390.50 ps standing against the firm, the trial Court committed no illegality in decreeing the suit of the plaintiff on the basis of proved document Ex.-A/1. Counsel for the plaintiff-respondent has also assailed the maintainability of the revision petition on the ground

of suit amount.

I have considered the rival submissions and carefully gone through the material on record as well as judgments referred to.

In this case, it is obvious from the prayer made in the revision petition itself that the petitioner is challenging the judgment and decree passed by the learned Addl. Civil Judge (Jr. Dn) No.1, Jodhpur dated 04.12.1995 and so also the judgment and decree dated 16.08.1996 passed by the learned Addl. District Judge No.2, Jodhpur in appeal filed by the petitioner. The trial Court decreed the suit of the plaintiff for an amount of Rs.2,390.20 ps alongwith 18% interest from the date of filing the suit till recovery of the amount. This revision petition was filed in the year 1997 and the amendment in the Civil Procedure Code was made with effect from 01.07.2002. Prior to amendment, according to Section 102, C.P.C. there was no remedy available to file second appeal against the judgment and decree for a sum not exceeding Rs.3,000/-. In the present case, the decretal amount is Rs.2,390.20 ps and as such there was no provision for second appeal and obviously for this reason the petitioner took recourse to filing the instant revision petition. Obviously, against the judgment and decree passed by the trial Court the petitioner availed remedy by way of appeal under Section 96, C.P.C. The legislature has, in its wisdom, expressly provided that no second

appeal shall lie due to lesser value or amount of the subject-matter and, therefore, where a clear restriction is imposed by the statute itself the same, in my considered opinion, cannot be set at naught by circumvention of remedy. It may significantly be noted that when the legislature has imposed the pecuniary restriction, the legislative intent cannot be misconstrued for a bar upon further challenge by way of appeal to grope for an alternate remedy because the very attempt will defeat the purpose of enactment of such restriction by the legislature.

There is yet another aspect of the matter. An appeal is essentially continuation of the original proceedings and the provisions applied at the time of institution of the suit are to be operative even in respect of the appeals. However, there is significant distinction between right to appeal and seeking redressal by way of revision. An appeal is, in effect, the entire proceedings before the appellate Court whereas entertainment of a revision petition is circumscribed by the purpose for enacting the provision. The appellate authority has the power to review the evidence and, in fact, it goes to the root of the premises for arriving at the finding arrived at; but, the revisionary scope cannot be equated with the right to appeal unless the statute specifically so provides and, therefore, the distinction between appeal and revision is real one. Under Section 115 (2), C.P.C. while exercising revisionary jurisdiction

no decree or order can be set aside where an appeal lies to the High Court or any Court subordinate thereto. In the circumstance, a revision petition under Section 115, C.P.C., whereunder the exercise of jurisdiction is fundamentally supervisory in nature, cannot be heard and decided to quash and set aside a decree which would have otherwise, in normal course, been interfered with under the appellate jurisdiction. In the present revision petition, the petitioner has challenged the decree and order of the trial Court and also the judgment of the lower appellate Court.

For the aforesaid reasons, even otherwise also, in the present revision petition no interference is warranted in the concurrent finding of the Courts below nor there is any illegality or irregularity committed by the trial Court as well as lower appellate Court in reaching the conclusion while deciding the material issues in favour of the plaintiff Bank.

Consequently, there is no force in the present revision petition and the same is hereby dismissed.

(Gopal Krishan Vyas) J.

Ojha, a.